

REMARKS

This amendment accompanies an RCE filing in the present patent application. Claims 17, 46-48, 52-52-58, and 62-70 are pending. Claims 1-16, 18-45, 49-51 and 59-61 have been canceled without prejudice or disclaimer. Claims 65-70 are new claims. Support for new claims 65, 66 and 70 is found in the original specification at page 5, lines 7-9.

The specification has been amended to incorporate specific disclosure from U.S. Patent No. 6,253,512, which was incorporated by reference in the original specification of the present application. This is not new matter since the then-pending U.S. Patent Application Serial No.09/292,488 was specifically incorporated by reference.

In the most recent office action, dated April 25, 2006, the Examiner rejected claims 46-54 and 56-64 under 35 U.S.C. §112, first paragraph, for failure to provide an adequate written description. Applicant has now amended the specification to include the appropriate disclosure to support the currently-pending claims. The disclosure incorporated into the specification includes five references to roof covering configurations where a single color blend occurs predominantly – to the extent of occurring on anywhere from 55 percent to 58 percent of the tabs. Further, the original specification in claim 25 provides that a predominant color – gray – occurs on approximately 60 percent of the tabs. These disclosures provide adequate support for claims 46, 56 and 68 which specify that roughly 60 percent of the tabs have a predominant tab color blend. Also, these disclosures provide adequate support for claims 52, 62, and 69 which specify that over 50 percent of the tabs have a predominant tab color blend. Further, these disclosures provide adequate support for claims 17, 55 and 67 which specify that the tabs have a predominant tab color blend. Accordingly, Applicant requests withdrawal of the rejection under 35 U.S.C. §112, first paragraph.

In the previous office action claims 17 and 33 were rejected under U.S.C. 103(a) as being obvious in view of the teachings of either the Phillips, Hulett, or Bondoc et al. references, in combination with the Overbury reference. This rejection is respectfully traversed.

Independent claims 17, 55 and 67 define a roof covering including a plurality of successive generally horizontal courses of laminated shingles, the shingles in each course being laid in a side-by-side relationship and horizontally offset from the shingles in adjacent courses. Each tab has a single color blend and the color blends of some of the tabs of each shingle are of a color different from the color blend of others of the tabs. Additionally, one of the color blends of the tabs occurs more frequently than any of the other color blends of the tabs, thereby defining a predominant tab color blend so that the appearance of the roof covering simulates a natural slate roof.

The three primary references, Phillips, Hulett, and Bondoc, do not show or suggest a roof covering having a predominant tab color blend. Further, none of the three references discloses a roof covering having the appearance of a natural slate roof.

Phillips discloses a roof covering having a wood shake appearance, and therefore lacks any suggestion for a roof covering providing the appearance of a natural slate roof. See, for example, the roof covering shown in Fig. 5, which gives the appearance of a wood shake roof. Also, Phillips discloses nothing about tab coloring or a predominant color configuration, other than the disclosure of shadow areas.

Hulett makes no mention of granule color or tab color, and does not disclose that tabs could be of different colors. Hulett makes no suggestion that his shingles could be configured to provide a roof covering having the appearance of a natural slate roof.

Bondoc discloses a roof covering that by its own terms disclaims the appearance of a slate roof. See column 1, lines 10-14. Bondoc clearly intends to

portray a "unique shingle" that does not mimic tile, slate or wood shake roofs. Further, Bondoc mentions nothing about color other than to say that the underlay can have a hue that contrasts with the hue of the overlay, presumably for a shadow effect. Bondoc doesn't disclose that each tab has a single color blend, and says nothing about having a predominant number of tabs of one color and other tabs of accent colors.

In conclusion, with respect to the three primary references, none of the references discloses or suggests a roof covering having the appearance of a slate roof. Further, there is no disclosure or suggestion that the tabs of the shingles be of a single color, with some of the tabs being of a color different from some of the other tabs, and with the roof covering having a predominant color.

The Overbury reference relates to a method of reclaiming factory seconds, or single-layer tabbed shingles with imperfections. The butt edges of the reclaimed shingles are cut by hand to remove the imperfect parts and define an irregularly shaped tab. Additional asphalt and granular material may then be added by hand to the reclaimed and cut shingles to cover and seal the newly cut edges. The additional granular material covers surface imperfections. Overbury specifically discloses that the additional granules may be configured so that the tabs of a shingle may be of different colors, with each tab having a single color blend. In Overbury's primary embodiment, each shingle has three tabs, with each of the tabs having a single color blend, with no two tabs of the same color blend, and with each shingle being identical to all the other shingles. Overbury further states that there can be occasional deviations from the primary embodiment. This deviation is explained in the specification at page 2, lines 93-96, where Overbury states that

...each tab will have a solid color different from other tabs in the strip, although if desired two or more adjacent tabs may now and then be given the same color.

Applicant notes that the statement includes the language "now and then", which is an indication as to the frequency of the condition wherein the two adjacent tabs have the same color. Applicant contends that this language would be interpreted by a person skilled in the art as limiting or restricting the occurrence of multiple tabs of the same color in the same shingle. The Merriam-Webster Online Dictionary defines "now and then" as meaning "occasionally" or "from time to time". One skilled in the art would expect shingles having multiple tabs of the same color blend in a single shingle to occur only occasionally, and would not expect them to occur on such a frequency as would result in a roof covering having a predominance of one color. The phrase "now and then" would connote only infrequent deviations from the norm, which in Overbury would be all tabs of each shingle being of a distinct color, and no two tabs being alike. Therefore, adding Overbury to any one of the three primary references would result in a combination where, although the tabs of each shingle might be of different colors, and some of the shingles might have more than one tab of the same color, the overall effect would not be a roof covering that has the appearance of a natural slate roof. In this respect the combination of Overbury with any of the three primary references fails to make out a *prima facie* case of obviousness, since the combination fails to meet all the limitations of the claim. The combination does not include a roof covering wherein one of the color blends of the tabs occurs more frequently than any of the other color blends to the extent that the appearance of the roof covering simulates a natural slate roof.

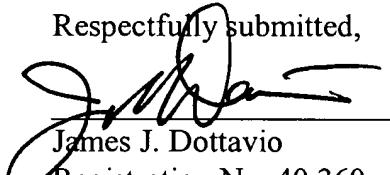
In the event that the arguments above are not sufficiently persuasive as to the patentability of the claims, Applicant is providing with this preliminary amendment a Declaration in which the Applicant sets forth various facts clearly describing the significant commercial success of a shingle product sold by Owens Corning, the Assignee of the present application, and made according to various embodiments of the present invention. This is further evidence of the non-obviousness of the Applicant's invention. In the declaration, the Applicant states that the Owens Corning

Berkshire® shingles have enjoyed wide success in the marketplace, and that an Owens Corning competitor, CertainTeed Corporation, has copied the concept underlying the invention due to Owens Corning's significant commercial success.

In the Declaration Applicant further states that he interprets the Overbury reference as being limited to a teaching where any deviation from a shingle where each tab has a different color is limited to occasional instances, occurring seldomly. Further, Applicant asserts that others skilled in the art of shingle design would also interpret the Overbury reference the same way, i.e., not disclosing a shingle design where the resulting roof covering would have a predominance of one color. The term "now and then" would connote only infrequent deviations from the norm, and therefore there will be no predominant color for the resulting roof covering.

In view of the above amendments and remarks, the Applicant has shown that the invention, as defined in the claims, is neither disclosed nor suggested by the references of record. Accordingly, the Applicant respectfully requests withdrawal of the rejections of record, and allowance of all claims.

Respectfully submitted,



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